SINGLE BENCH

5531/05

P.B. No.

Presented by Shri B.K. Agrawal

dated 21/10/05

C.D. 100 3

IN THE HIGH COURT OF JUDICATURE AT BILASPUR

CHHATTISGARH

W.P. No.5351/2005

PETITIONER : Mohan Lal Diwakar S/o Shri Ramadhar aged 45 years Caste Satnami, R/o Village Kataud Tahsil Navagarh Distt. Janjgir-Champa (C.G)

Versus

RESPONDENTS :

1. State of Chhattisgarh through Secretary Deptt. of Panchayat, D.K.S. Bhawan, Mantralaya, Raipur (C.G.)
2. Collector, District Janjgir- Champa (C.G.)
3. Addl. Collector, Distt. Janjgir Champa(C.G.)
4. Chief Executive Officer, Janpad Panchayat, Navagarh,at Janjgir Distt. Janjgir- Champa (C.G.)
5. Tahsildar, Navagarh Cum Returning Officer, for Election of Janpad Panchyat, Navagarh, at Janjgir, Distt. Janjgir Champa (C.G.)
6. Ringu Lal S/o Ramnath aged about 44 years Caste Satnami R/o Village Kataud Tahsil Navagarh Distt. Janjgir Champa (C.G.).
7. Ashok Kumar S/o Pandu Ram aged 34 years Village Pachari Tahsil Navagarh Distt. Janjgir Champa (C.G.)
8. Agasdas S/o Chhatram aged 35 years Village Pachari Tahsil Navagarh Distt. Janjgir Champa (C.G.)
9. Om Prakash S/o Mastu Ram aged 34 years Village Pachari Tahsil Navagarh Distt. Janjgir Champa (C.G.)
10. Budhau Ram S/o Netram aged 45 year Village Kansa Tahsil Navagarh Distt. Janjgir Champa (C.G.)
11. Ram Kumar S/o Gujalu aged 36 years Village Kataud Tahsil Navagarh Distt. Janjgir Champa (C.G.).
12. Shrimati W/o Ringu Lal aged 38 years Village Kataud Tahsil Navagarh Distt. Janjgir Champa (C.G.).

RECEIVED-COPY 21/10/05 CLERK to A. G. BILASPUR

WRIT PETITION UNDER ARTICLE 226/227 OF CONSTITUTION OF INDIA

Contd.....2

XI-HC-78

57

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ...W.P.ND...5351/05... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

9-11-2005

Shri Govind Ram Miri, counsel for the petitioner.

Shri Yashwant Singh Thakur, Govt. Advocate for the State/ respondents No.1, 2, 3 and 5.

The petitioner has preferred this writ petition questioning the legality, propriety and correctness of the order dated 11-10-2005 passed by the Additional Collector, Janjgir-Champa, in Election Petition No.07/A-89(21)/2004-05 whereby learned Additional Collector while allowing the said election petition declared the election of the petitioner as illegal on the ground that the petitioner was not eligible to contest the election and ultimately, while setting aside the election, the post of Member, Janpad Panchayat, Navagarh was declared as vacant.

Brief facts leading to filing of this writ petition are that the petitioner herein along with other candidates contested for the post of Member of Janpad Panchayat No.25, Navagarh in the year 2005 and the election for the said post was held on 15-1-2005. At the end of counting of votes the petitioner herein was declared elected. However, respondent No.6 Ringu Lal filed an election petition (Annexure-P/1) before the Collector, Janjgir-Champa on the ground that on the date when the petitioner herein filed his nomination government dues were outstanding against him as the petitioner was

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Sarpanch for two terms of Gram Panchayat Kataud and in that capacity in the year 1985 he took advance for the construction of the Panchayat Bhawan but he did not complete the construction. An amount of Rs.14,313/- was outstanding against him, therefore, the Naib Tehsildar, Janjgir initiated the proceeding for recovery of the said amount and that has not been recovered so far. Even said Mohanlal again withdrew the amount for construction of the building of the Primary School of Kataud and the said building was not completed, therefore, Janpad Panchayat, Navagarh initiated the proceeding for recovery of the amount of Rs.27,158/- on 6-10-1994 and the said amount has also not been paid. Notices were issued on the said election petition and reply was filed by the petitioner herein in which he denied the allegations. However, learned Additional Collector summoned the record regarding recovery from the Chief Executive Officer of the Janpad Panchayat. He also requisitioned the declaration made by the petitioner herein before the Returning Officer and after perusal of the record, passed the impugned order.

The main grievance of learned counsel for the petitioner is that learned Additional Collector without following the procedure as envisaged under the Chhattisgarh Panchayats (Election Petitions, Corrupt Practices and Disqualification for Membership) Rules, 1995 (for short 'the Rules, 1995) has passed the impugned order.

SP/FS/2005 - 20,000

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Learned counsel for the petitioner submitted that no opportunity was given to the petitioner to meet the charges levelled against the petitioner regarding outstanding amount nor any witness was produced by the petitioner in order to prove the document regarding outstanding amount against the petitioner, nor the petitioner was allowed to adduce any evidence in order to refute the charges regarding outstanding amount against the petitioner.

Having heard learned counsel for the parties, I have perused the impugned order. Perusal of the impugned order shows that procedure as envisaged under Rules 11 and 12 of the Rules, 1995 has not been followed.

Rule 11 (1) envisages that "Subject to the provisions of these rules, every election petition shall be enquired into by the specified officer as nearly, as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908, to the trial of suits:

Provided that it shall only be necessary for the specified officer to make a memorandum of the substance of the evidence of any witness examined by him" and Rule 12 envisages production of the witnesses by the parties.

Learned counsel for the petitioner further submitted that compliance of the Rule 3 of the Rules, 1995 was also not made,

60

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

therefore, in view of the above, the order passed by the learned Additional Collector is prima facie perverse, as such no notice is necessary to the other persons in this matter.

However, if respondent No.6 Ringu Lal in any way feels aggrieved, then he will be at liberty to move an application for modification of this order.

In the result, the writ petition is allowed and the impugned order is quashed. The matter is remanded back to learned Additional Collector, Janjgir to try the election petition in accordance with the Rules, 1995 and pass appropriate order in accordance with law.

Parties are entitled for certified copy of this order.

Sd/-
L.C.Bhadoo
Judge

Barve

SP/FS/2005 - 20,000